IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 280 OF 1989

The State of Maharashtra. ... Appellant.
(Org.Complainant.)

Versus.

1. Raopsaheb Ramgonda Patil,
Age 31, Occ.: Business,
of Sulkud, Taluka Kagal,
District: Kolhapur.

2. Annasaheb Ramgonda Patil,
Age: 39, Occ.: Agriculture,
of Sulkud, Taluka Kagal,
District Kolhapur.

3. Sou.Ahilya Ramgonda Patil,
Age 60, Occ.: Household,
work of Sulkud, Taluka Kagal,
District Kolhapur. .... Respondents.
(Org.Accused 1 to 3)

Smt.P.H.Kantharia, A.P.P. for the Appellant.

Shri A.Y.Sakhare, Senior Counsel with Smt,Varsha Palav
for the Respondents No.1 to 3.

CORAM ; SMT.RANJANA DESAI, &
ABHAY S. OKA, JJ.

DATED : 1st December, 2004.

ORAL JUDGMENT (Per Abhay S.Oka, J.).

1. By this Appeal against acquittal under section 378 of the Code of Criminal Procedure, 1973, the State of Maharashtra has taken exception to the Judgment and Order dated 22nd November 1988 passed by the learned Assistant Sessions Judge, Kolhapur, in Sessions Case

No.143 of 1987. By the said Judgment and Order the Respondents/Accused who were prosecuted for the offence punishable under section 498A and section 306 read with section 34 of the Indian Penal Code were acquitted.

2. This is yet another case where there was a sad end of the life of a young married woman. The case of the prosecution is that one Drakashyani was the wife of Accused No.1 Raosaheb. The marriage took place sometime in the year 1982. The Accused No.2 is the elder brother of Raosaheb and Accused No.3 is the mother of the Accused No.1 and 2. The age of the said Drakashayani (hereinafter referred to as "the deceased") was 22 years. The Accused were frequently demanding two tolas of gold and a scooter from the father of the deceased and that the Accused were frequently beating the deceased. As a result of the ill treatment, the deceased set herself on fire on 16th July 1987. While undergoing medical treatment she expired. The prosecution examined 7 witnesses. P.W.1 Dr.R.D.Thorat conducted the postmortem examination on the body of the deceased. P.W.2 Ramgonda is the father of the deceased. P.W.3 Annagonda is the uncle of the deceased. P.W.4 Smt.Sushila is the mother of the deceased. P.W.5 Maruti Powar is the Executive Magistrate who recorded the dying

declaration of the deceased. P.W.6 Dr.Kailash Prabhu is the Medical Practitioner who examined the deceased before her dying declaration was recorded. P.W.7 Ravasaheb Patil is the Investigating Officer. The learned Judge has disbelieved the evidence of P.W.2 Ramgonda, father of the deceased. After considering the evidence on record, the learned Judge held that the prosecution has failed to prove the guilt of the Accused.

3. Ms.P.H.Kantharia, the learned A.P.P. heavily relied upon the letter at Exhibit 22 written by the deceased to her grand father and the endorsement made by the Accused No.1 on the said letter. She also relied upon another letter at Exh.23 sent by the deceased to her grand father. The learned A.P.P. also relied upon two letters written by the Accused No.1 to the father of the deceased. The learned Counsel further submitted that from the endorsement made by the Accused No.1 in his handwriting on the letter at Exh.22 it is very clear that the Respondent No.1 had beaten the deceased on many occasions. She submitted that the last letter written by the Accused No.1 on the date of incident shows that due to the ill-treatment meted to her, the deceased was likely to do something drastic and therefore by the said letter the Accused called upon the father of the

deceased to take away the deceased. She submitted that the evidence of the parents of the deceased was sufficient to establish the offence. She submitted that except for holding that the guilt of the accused was established beyond reasonable doubt no other view could have been taken on the basis of the evidence on record.

4. Shri Sakhare, the learned Senior Counsel appearing for the Respondents submitted that the first letter in which the Accused No.1 has allegedly stated that he had beaten the deceased has been written a year earlier to the date of incident. He stated that one of the two letters written by the Accused No.1 to his father-in-law clearly shows that the Accused and the father of the deceased enjoyed cordial relationship till last. He relied upon the two dying declarations of the deceased at Exh.33 and Exh.39 in which the deceased had stated that when she was lighting the stove for making tea, the border of her saree fell on the stove and her saree caught fire. After she started shouting the Accused Nos.2 and 3 came in the kitchen and started extinguishing the fire. At that time Accused No.1-husband of the deceased was not present in the house. She stated that her father-in-law and mother-in-law extinguished the fire and her mother-in-law and other family members took her to Dr.

Prabhu's hospital at Kolhapur. He stated that the first dying declaration has been recorded before the Special Executive Magistrate and the same has been proved in evidence. He stated that in view of what is stated in the dying declarations no fault can be found with the impugned Judgment and Order.

5. For establishing the ill-treatment given to the deceased, the prosecution has examined P.W.2 Ramgonda, who is the father of the deceased. He proved letters written by the deceased and the Accused No.1 in his evidence. He narrated the alleged incidents of cruelty. He stated that the deceased was time and again reporting to him the incidents of cruelty practiced by the Respondents. He narrated that his daughter was being ill-treated for the purpose of demand of a scooter and gold by the Respondents and their family members. The prosecution has also examined P.W.3 Anandgonda, the uncle of the deceased. He has made general statements in his evidence regarding ill-treatment given to the deceased. P.W.5 is Sushila, mother of the deceased. She has also deposed about the letters received from the deceased. However, she has not stated that her daughter personally told her anything about the demand for scooter and gold.

6. P.W.5 is Maruti Pawar, who recorded the dying declaration of the deceased on 17th July 1987. The said dying declaration was recorded in the Hospital of Dr.Prabhu. He stated that he recorded the dying declaration exactly as per the version of the deceased and it was kept in the sealed envelope by him. In the cross-examination he stated that Dr.Prabhu examined the deceased in his presence and informed that the deceased was in a position to make dying declaration. He stated that from the questions put to the deceased and the answers given by her, he was convinced that the deceased was in a position to understand what was being asked to her. He stated that he also informed the deceased that he was a Magistrate and she must tell the truth. He stated that after having satisfied himself that the deceased was not under any pressure and that she was not tutored by anybody for giving dying declaration, he recorded the dying declaration. He stated that he obtained the thumb impression of the deceased on the dying declaration. He stated that Dr.Prabhu examined her and put his signature on the dying declaration certifying that the deceased was in conscious condtiion to make such declaration. In the cross-examination, he stated that Dr.Prabhu was present from the beginning to end when the dying declaration was being recorded. On being asked as to how incident had taken place, the

deceased stated that she was preparing tea on a stove. At that time the border of her saree fell on the stove as a result of which saree was caught fire. At that time her mother-in-law and father-in-law were sitting in the front portion of the house and she was alone in the kitchen. Her husband was not present in the house. After her body started burning she shouted. Immediately her in-laws came in the kitchen and tried to extinguish the fire.

7. P.W.6 Dr.Prabhu is a Medical Practitioner in whose hospital the dying declaration at Exh.33 was recorded. He stated that the deceased gave him history that she sustained the burn injuries as her saree caught fire while lighting a stove. He stated that on his instructions the Magistrate was called and he informed the Magistrate that the patient was conscious. He stated in the cross-examination that he was satisfied after examining the deceased that she was in conscious state and was in a position to give dying declaration. He stated that thereafter the dying declaration was recorded. He however denied that the dying declaration was recorded in his presence.

8. The second dying declaration is at Exh.39. The said dying declaration was recorded by the Police Head

Constable Pathan. In the said dying declaration, the deceased has again given the same version as in the other dying declaration. Both the said dying declarations which are proved in evidence completely destroy the prosecution case of suicide committed by the deceased. The said declarations also demolish the case of the prosecution that the suicide was as a result of the ill-treatment meted out to her by the accused as the father of the deceased was not complying with the demands of the accused. In view of the dying declarations and the evidence of Dr.Prabhu, the learned Sessions Judge has disbelieved the evidence of the parents of the deceased and the uncle of the deceased. The only piece of evidence to prove ill-treatment meted out to the deceased is the first letter at Exh.22 allegedly written by the deceased and the endorsement made thereon by the Respondent No.1/Accused No.1. However the said letter does not indicate that the deceased was being ill-treated as demand for scooter and gold was not complied with by the father of the deceased. Moreover the said letter is allegedly written more than one year prior to the date of incident.

9. Even assuming that some other view can be taken on the basis of the evidence on record, it cannot said that the view taken by the learned Sessions Judge could not

have been taken on the basis of the evidence on record. This being the position, in an appeal against acquittal it is not open for us to interfere.

10. Hence the Appeal is dismissed.

(Smt.Ranjana Desai, J.)

(Abhay S.Oka, J.)